

# ELLIS:LAWHORNE

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January 12, 2007

**FILED ELECTRONICALLY AND ORIGINAL VIA 1<sup>ST</sup> CLASS MAIL SERVICE**

The Honorable Charles L.A. Terreni  
Chief Clerk  
**South Carolina Public Service Commission**  
Post Office Drawer 11649  
Columbia, South Carolina 29211

RE: BellSouth Telecommunications, Inc., v. NewSouth  
Communications Corp., *Docket No. 2004-63-C* and

Enforcement of Interconnection Agreement Between  
BellSouth Telecommunications, Inc. and NuVox  
Communications, Inc., *Docket No. 2005-82-C*

Dear Mr. Terreni:

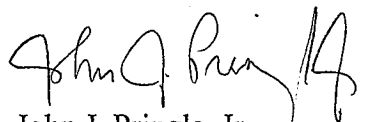
Enclosed is the original and one copy of the **Joint Motion to Dismiss Complaint** for filing by BellSouth and NuVox in the above-referenced Dockets. By copy of this letter, I am serving all parties of record in this proceeding, and enclose my certificate of service to that effect.

Please acknowledge your receipt of this document by file-stamping the copy of this letter enclosed, and returning it in the envelope provided.

If you have any questions or need additional information, please do not hesitate to contact me.

With kind regards, I am

Very truly yours,

  
John J. Pringle, Jr.

JJP/cr

Enclosures

cc: Susan Berlin, Esquire  
all parties of record

**THIS DOCUMENT IS AN EXACT DUPLICATE OF THE E-FILED COPY  
SUBMITTED TO THE COMMISSION IN ACCORDANCE WITH ITS ELECTRONIC  
FILING INSTRUCTIONS.**

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA**

In Re: BellSouth Telecommunications, Inc. v. )	<b>Docket No. 2004-63-C</b>
NewSouth Communications Corp. )	
)	
In Re: Enforcement of Interconnection Agreement )	<b>Docket No. 2005-82-C</b>
Between BellSouth Telecommunications, Inc. and )	
NuVox Communications, Inc. )	
)	

**JOINT MOTION TO DISMISS COMPLAINTS**

BellSouth Telecommunications, Inc. ("BellSouth") and NuVox Communications, Inc. ("NuVox"), through counsel, and pursuant to S.C. Code Ann. Section 58-3-225(E), hereby respectfully request that the Public Service Commission of South Carolina (the "Commission") dismiss, with prejudice, the Complaints of BellSouth filed in the above-captioned proceedings, dated March 5, 2004 and March 29, 2005. In support of this Joint Motion, BellSouth and NuVox state as follows:

1. On March 5, 2004, BellSouth filed with the Commission a Complaint to enforce the audit provisions of the interconnection agreement between BellSouth and NewSouth Communications, Corp. ("NewSouth") for the State of South Carolina (the "NewSouth Agreement"), and to obtain relief for alleged breaches of the NewSouth Agreement, and alleged violation of the *Supplemental Order Clarification*.<sup>1</sup> Since that time, NewSouth has been merged into and become a part of NuVox. See Docket No. 2004-272-C.

2. On March 29, 2005, BellSouth filed with the Commission a Complaint to enforce the audit provisions of the interconnection agreement between BellSouth and NuVox for

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<sup>1</sup> *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Supplemental Order Clarification, 15 FCC Rcd 9587 (2000) ("*Supplemental Order Clarification*").

the State of South Carolina (the "NuVox Agreement"), and to obtain relief for alleged breaches of the NuVox Agreement.

3. On March 31, 2006, BellSouth and AT&T Inc. ("AT&T") filed with the Federal Communications Commission ("FCC") an Application requesting authority to transfer to AT&T control of certain licenses and authorizations held directly and indirectly by BellSouth.<sup>2</sup>

4. On December 29, 2006, the FCC approved the merger of BellSouth and AT&T, subject to the voluntary commitments of AT&T,<sup>3</sup> and the parties consummated the merger on that date.<sup>4</sup> The final EEL audit merger condition approved by the FCC states:

**AT&T/BellSouth shall cease all ongoing or threatened audits** of compliance with the [FCC]'s EEL eligibility criteria (as set forth in the *Supplemental Order Clarification's* significant local use requirement and related safe harbors, and the *Triennial Review Order's* high capacity EEL eligibility criteria), **and shall not initiate new EELs audits.**<sup>5</sup>

Therefore, pursuant to the FCC's announced adoption of a Memorandum Opinion and Order approving the merger, BellSouth became obligated to cease all "ongoing or threatened" EEL audits, as of December 29, 2006.<sup>6</sup>

5. In consideration of the EEL audit merger condition approved by the FCC, BellSouth and NuVox agree that the disputes before the Commission in the above-captioned proceedings are moot.

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<sup>2</sup> *In the Matter of BellSouth Corporation and AT&T Inc., Application Pursuant to Section 214 of the Communications Act of 1934 and Section 63.04 of the Commission's Rules for Consent to Transfer the Control of BellSouth Corporation to AT&T Inc.*, WC Docket No. 06-74 (filed Mar. 31, 2006).

<sup>3</sup> FCC Approves Merger of AT&T Inc. and BellSouth Corporation, Fed. Communications Comm'n News (rel. Dec. 29, 2006) ("News Release").

<sup>4</sup> Press Release, AT&T and BellSouth Join to Create a Premier Global Communications Company: Deal Consolidates Ownership of Cingular Wireless; BellSouth and Cingular Brand Transition to Begin Soon (Dec. 29, 2006) at [www.att.com/gen/press-room..](http://www.att.com/gen/press-room..)

<sup>5</sup> News Release, AT&T Merger Commitment Letter, Attachment at 3.

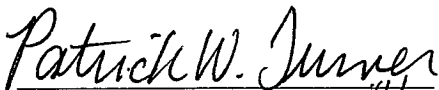
<sup>6</sup> *Id.* at 3 ("Action by the Commission, and effective upon adoption, Friday, December 29, 2006, by Memorandum Opinion and Order.").

6. The Commission has not yet issued its orders in the above-captioned proceedings, resolving the issues presented in BellSouth's Complaints.

WHEREFORE, for the reasons set forth herein, BellSouth and NuVox respectfully request that the Commission dismiss BellSouth's Complaints in the above-captioned proceedings.

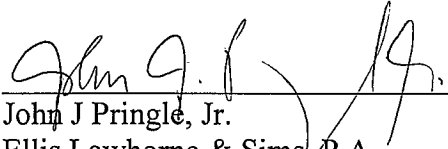
Submitted this 12th day of January, 2007.

Respectfully Submitted,

  
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*Attorneys for NuVox Communications, Inc.*

**BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA**

In Re: BellSouth Telecommunications, Inc. v. )	Docket No. 2004-63-C
NewSouth Communications Corp. )	
)	
In Re: Enforcement of Interconnection )	Docket No. 2005-82-C
Agreement Between BellSouth )	
Telecommunications, Inc. and NuVox )	
Communications, Inc. )	

This is to certify that I have caused to be served this day, one (1) copy of the **Joint Motion to Dismiss Complaints** via electronic mail service and by placing a copy of same in the care and custody of the United States Postal Service (unless otherwise specified), with proper first-class postage affixed hereto and addressed as follows:

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Columbia SC 29211

Nannette Edwards, Esquire  
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\_\_\_\_\_  
Carol Roof, Paralegal

January 12, 2007  
Columbia, South Carolina